

**Government Code § 6103;
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

vs.

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK. AND DOES 1 THROUGH
100, INCLUSIVE,

Defendants.

CASE NO. BC 414602

[Assigned to Hon. Joanne O'Donnell, Dept. 37]

[Discovery Referee: Hon. Diane Wayne, Ret.]

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
PITCHESS MOTION FOR PEACE
OFFICER RECORDS AND
INFORMATION**

Date: March 11, 2011
Time: 9:30 a.m.

Action Filed: May 28, 2009
Trial Dates: April 13, 2011 (Guillen);
June 8, 2011 (Karagiosian);
July 27, 2011 (Rodriguez)

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1 **I. INTRODUCTION**

2 More than 18 months after filing the instant lawsuit against Defendant City of Burbank
3 (“Defendant”), the three remaining Plaintiffs in this case – Omar Rodriguez (“Rodriguez”), Cindy
4 Guillen-Gomez (“Guillen”) and Steve Karagiosian (“Karagiosian”) (collectively “Plaintiffs”) – have
5 made their first attempt to obtain Burbank Police Department (“BPD”) peace officer documents and
6 information under the mandatory *Pitchess* procedures. (See *Pitchess v. Superior Court* (1974) 11
7 Cal.3d 531; Pen. Code, § 832.7(a); Evid. Code, §§ 1043-1046.)

8 Plaintiffs were required to establish “good cause” through an affidavit showing the
9 requested discovery or disclosure is material to the subject matter involved in this litigation. But
10 Plaintiffs’ motion seeks a whopping **57 categories of documents** (including subparts), many of
11 which are overbroad “fishing expeditions” and patently immaterial to the instant lawsuit.

12 In particular, Plaintiffs’ motion should be denied outright as to all categories that do not
13 include the required “identification” of any or all peace officers “whose records are sought” (Evid.
14 Code, § 1043(b)(1)) (i.e., Category Nos. 3, 9-15, 17(q)-(r), 18(l)-(m), 19(h)-(i)). Plaintiff’s motion
15 also should be denied as to their requests for “all” documents and information pertaining to:

16 ▪ “any complaints,” and any investigation and disposition thereof, of retaliation,
17 discrimination or harassment based on race or sex in the BPD since 1995 (Category Nos. 9-13,
18 17(q)-(r), 18(l)-(m), 19(h)-(i)) – including any and all complaints by non-party Bill Taylor (No. 14)
19 and those against certain non-party officers (Nos. 18(k), 19(g));

20 ▪ “any investigation against or involving” 11 non-party “OFFICERS” (Category No.
21 16(a)) and all “performance evaluations” of those officers (No. 16(b));

22 ▪ “conduct more than five years before the event or transaction that is the subject of
23 the litigation” (Evid. Code, § 1045(b)(1)) – i.e., alleged conduct before December 2001 as to
24 Rodriguez and before 1999 as to Guillen and Karagiosian;

25 ▪ alleged conduct after May 27, 2009 (when Plaintiffs submitted their respective
26 government claims and their complaints with the Department of Fair Employment and Housing
27 (“DFEH”)), or, alternatively, after July 31, 2009 (when Plaintiffs filed their operative First
28 Amended Complaint (“FAC”)) – including documents and information regarding over 30 BPD

1 internal affairs ("IA") investigations regarding a robbery of Porto's Bakery that were pending from
2 November 11, 2009 to March 5, 2010 (the "2009-2010 Porto's Investigations");

3 ▪ Karagiosian's claims for discrimination and retaliation under the Fair Employment
4 and Housing Act ("FEHA") (Gov. Code, §§ 12940(a), (h)) and for violation of the Public Safety
5 Officers Procedural Bill of Rights Act ("POBRA") (Gov. Code, § 3309.5), all of which the Court
6 dismissed on summary adjudication (Minute Order, 12/7/2010, attached hereto as Exh. A); and

7 ▪ any or all of Guillen's claims that may be dismissed on Defendant's Motion for
8 Summary Judgment/Adjudication, which will be heard on March 7, 2011.

9 Defendant does not, of course, object to in camera review of Plaintiffs' own personnel
10 records, subject to the restrictions of the *Pitchess* statutes. However, Plaintiffs have not established
11 good cause for in camera review, let alone disclosure, of the personnel records of non-party officers.

12 In the event the Court conducts a review of non-party officers' personnel records, it should
13 not disclose any verbatim reports or records, but instead should only allow disclosure of names,
14 addresses and phone numbers of any complainants and witnesses and the dates of any material
15 incidents. Defendant further submits that after the Court's in camera review, the names of other
16 officers should be redacted from any production of Plaintiffs' own personnel records.

17 Lastly, Defendant requests a mandatory protective order limiting the use of any documents
18 or information disclosed to each individual Plaintiff's case.

19
20 **II. PEACE OFFICER PERSONNEL RECORDS MAY BE DISCLOSED ONLY IN COMPLIANCE WITH**
PITCHESS PROCEDURES

21 "The disclosure of peace officer personnel records is governed by rules different from those
22 for discovery of other information because, although 'evidence contained in a law enforcement
23 officer's personnel file may be relevant in a lawsuit, [that] officer "has a strong privacy interest in
24 his or her personnel records and ... such records should not be disclosed unnecessarily.' [Citations.]"
25 (*Zanone v. City of Whittier* (2008) 162 Cal.App.4th 174, 186.) Accordingly, with exceptions not
26 applicable here, such records and "information obtained from these records" are "confidential and
27 ***shall not*** be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections
28 1043 and 1046 of the Evidence Code." (Pen. Code, § 832.7(a), emphasis added.)

1 The *Pitchess* statutes define “personnel records” as “any file maintained under that
2 individual’s name by his or her employing agency and containing records relating to any of the
3 following”: (a) specified “personal data”; (b) medical history; (c) employee benefit elections; (d)
4 employee “advancement, appraisal, or discipline”; (e) complaints or investigations thereof
5 “concerning an event or transaction in which he or she participated, or which he or she perceived,
6 and pertaining to the manner in which he or she performed his or her duties”; and (f) “[a]ny other
7 information the disclosure of which would constitute an unwarranted invasion of personal privacy.”
8 (Pen. Code, § 832.8.)

9 A party seeking discovery of peace officer personnel records must file a motion that
10 includes “*identification*” of each “*peace ... officer whose records are sought*” (Evid. Code, §
11 1043(b)(1), emphasis added) and “*affidavits showing ‘good cause for the discovery,’ first by*
12 *demonstrating the materiality of the information to the pending litigation* ([Evid. Code, §
13 1043(b)(3)].)” (*Warrick v. Superior Court* (2005) 36 Cal.4th 1011, 1019.)

14 Although the “good cause” showing has been described as “relatively low” (*ibid.*), it
15 requires the moving party to “*articulate how the discovery being sought would support*” *his claims*
16 “*or how it would impeach the officer’s version of events.*” (*Warrick*, at p. 1021, emphasis added.)
17 In particular, “the moving party must allege facts with sufficient specificity to demonstrate *more*
18 *than a general interest* in information helpful to [his or her case]. [Citation.]” (*Williams v. Superior*
19 *Court* (2006) 140 Cal.App.4th 1422, 1433, emphasis added.)

20 If the trial court finds “good cause” for discovery, “the custodian of records should bring to
21 court all documents ‘potentially relevant’ to the [*Pitchess*] motion. [Citation.]” (*People v. Mooc*
22 (2001) 26 Cal.4th 1216, 1226.) Thereafter, the trial court “shall examine the information in
23 chambers in conformity with [Evidence Code] Section 915” (Evid. Code, § 1045(b)) – i.e., “out of
24 the presence and hearing of all persons *except the person authorized [to possess the records] and*
25 *such other persons [the custodian of records] is willing to have present*” (*Mooc*, at p. 1226,
26 emphasis added, brackets in original, quoting Evid. Code, § 915(b)).

27 Moreover, Plaintiffs largely disregard the principle that the “relatively low” “good cause”
28 standard for discovery “*is offset*” by the “*protective provisions*” of Evidence Code section 1045(b).

(*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83.) The court “*shall exclude* from disclosure,” among other things, “[i]nformation consisting of complaints concerning conduct occurring *more than five years before* the event or transaction that is the subject of the litigation in aid of which discovery or disclosure is sought” (Evid. Code, § 1045(b)(1)), and facts “that are *so remote as to make disclosure of little or no practical benefit*” (*id.*, § 1045(b)(3), emphasis added). After the required in camera review, the trial court will disclose “*only that information falling within the statutorily defined standards of relevance.*” (*Warrick, supra*, 36 Cal.4th at p. 1019, emphasis added; Evid. Code, § 1045(a).)

III. PLAINTIFFS’ MOTION SHOULD BE DENIED OUTRIGHT IN SEVERAL RESPECTS

A. Categories That Fail To Identify Any Peace Officers Should Be Rejected

Contrary to the unambiguous threshold statutory requirement that a *Pitchess* motion include “identification” of all peace officers “whose records are sought” (Evid. Code, § 1043(b)(1)), several categories in Plaintiffs’ motion identify *no BPD officers at all*. These include the requests for:

- “[a]ll documents evidencing or pertaining to three [*sic*] BPD internal affairs investigations” regarding the Porto’s robbery (Category No. 3);
- “all documents evidencing or pertaining to any complaints,” and any investigation and disposition thereof, of retaliation, discrimination or harassment based on race or sex in the BPD since 1995 (Category Nos. 9-13), including “any and all” documents regarding “any and all” complaints by Bill Taylor (No. 14);
- the “catch-all” category of “[a]ny and all documents constituting, memorializing, related to or generated as a result of this lawsuit or any written or oral complaints made by Plaintiffs to the Defendants,” whether or not related to an “official investigation” (Category No. 15);
- “[a]ny and all documents” regarding Irma Rodriguez Moisa’s “investigation into harassment at the BPD, and all related materials, notes and other documents” (the “Moisa Investigation”) (Category Nos. 17(q), 18(l), 19(h)); and
- “[a]ny and all documents” regarding the “investigation into harassment at the BPD” by attorney Sergio Bent (the “Bent Investigation”) “and all related materials, notes and other documents” (Category Nos. 17(r), 18(m), 19(i)).

1 Because none of these categories contains the required “identification” of any BPD officer
2 “whose records are sought” (Evid. Code, § 1043(b)(1)), they fail to meet a threshold requirement
3 for compelled discovery under the *Pitchess* statutes. This is not a mere technicality; the statutory
4 identification requirement is essential to protect “the peace officer’s just claim to confidentiality” in
5 his or her personnel records. (*City of Santa Cruz, supra*, 49 Cal.3d at p. 84.) This is a sufficient
6 basis, in and of itself, to compel outright denial of Plaintiffs’ motion as to Category Nos. 3, 9, 10,
7 11, 12, 13, 14, 15, 17(q), 17(r), 18(l), 18(m), 19(h) and 19(i).¹

8 **B. Categories Broadly Referencing All Job Bias Claims Within The BPD Since**
9 **1995 – Including Those By Or Against Non-Parties – Are Overbroad And**
10 **Immaterial**

11 Plaintiffs also seek “[a]ll documents evidencing or pertaining to any complaints” within the
12 BPD since 1995, and any investigation and disposition thereof, of “racial bias/discrimination/
13 harassment” (Category No. 9), “gender bias/discrimination/harassment” (No. 10), “sexual harass-
14 ment” (No. 11), “racial harassment” (No. 12) and “workplace retaliation” (No. 13) – including
15 complaints ostensibly made by non-party Bill Taylor (No. 14), who has his own separate lawsuit
16 currently pending against Defendant (LASC No. BC 422252), and complaints against other non-
17 party BPD officers (Nos. 18(k), 19(g)). Plaintiffs also seek “[a]ny and all documents” regarding the
18 Moisa and Bent Investigations (Nos. 17(l), 17(r), 18(l), 18(m), 19(h), 19(i)).

19 Not only do most of these categories include irrelevant time frames (pp. 8-11, below) and
20 fail to identify any peace officers whose records are being sought (pp. 4-5, above), but Plaintiffs
21 utterly fail to “demonstrate[e] the materiality of the information to the pending litigation.” (*Warrick,*
22 *supra*, 36 Cal.4th at p. 1019.)

23 Plaintiffs’ only attempt to satisfy this requirement is their counsel’s conclusory assertion that
24 the documents “will show that the BPD has known about” alleged retaliation, race or sex bias and
25 racial or sexual harassment “throughout the employment of the Plaintiffs, yet took no steps to
26 remedy said problem[s] in direct violation of its duties to the Plaintiffs under *Government Code*
27 §12940.” (Gresen Decl., pp. 32-33, 37, 39, 40-41.)

28 ¹ The Moisa Investigation documents and related materials also are *protected by the attorney-
client and work product privileges* and are not subject to in camera review, discovery or disclosure
for this additional reason.

Such sweeping arguments fall short of Plaintiffs' duty to "allege facts with sufficient specificity to demonstrate more than a general interest in information helpful to [their claims]. [Citation.]" (*Williams, supra*, 140 Cal.App.4th at p. 1433.) Among other things, Plaintiffs offer no factual allegations – and no legal authority – as to how complaints *by persons other than Plaintiffs themselves* would demonstrate that Defendant violated "its duties *to the Plaintiffs*" (*Pitchess* Motion, pp. 21-22, emphasis added) to "prevent discrimination and harassment from occurring." (Gov. Code, § 12940(j)(1), (k).)

To the contrary, the law is clear that Plaintiffs cannot prove the duty to prevent harassment and discrimination "was owed to them" *unless Plaintiffs can show they themselves were subjected to "actionable harassment or discrimination."* (*Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 289, emphasis added; accord, *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 880 ["the statute does not create a stand-alone tort"].) Under *Trujillo* and *Thompson*, complaints of harassment, discrimination and retaliation by persons other than Plaintiffs are *immaterial to Plaintiffs' own claims*.

Because the required affidavit of Plaintiffs' counsel has not demonstrated the materiality of Category Nos. 9-14, 17(q)-(r), 18(k)-(m) or 19(g)-(i) to this litigation (Evid. Code, § 1043(b)(3)), Plaintiffs have not carried their burden of showing that their interest in discovery outweighs the "just claim to confidentiality" of any and all BPD officers (including those unnamed by Plaintiffs) whose personnel records include job bias or retaliation complaints, or investigations of alleged harassment. (*City of Santa Cruz, supra*, 49 Cal.3d at p. 84.) Accordingly, this Court should deny outright Plaintiffs' request for documents falling within Category Nos. 9-14, 17(q)-(r), 18(k)-(m) and 19(g)-(i). (See also p. 5, fn. 1, above.)

C. **Categories Seeking All Performance Evaluations Of 11 Non-Party Officers, And Documents Pertaining To Investigations Of Those Officers, Are Overbroad, Immaterial And Unduly Invasive Of Officers' Constitutional Privacy Rights**

Category Nos. 16(a) and 16(b) identify 11 BPD "OFFICERS" for whom Plaintiffs seek "[a]ny and all documents constituting, memorializing, or generated as part of any investigations against or involving any of the OFFICERS" (No. 16(a)) and "[a]ny and all performance evaluations of documents [*sic*] constituting, memorializing, or relating to the performance evaluations of the

1 OFFICERS during their tenure with the BPD” (No. 16(b)). Plaintiffs’ counsel offers the following
2 rationalization for these sweeping requests:

3 “As described above, each of the named officers participated in *some form of*
4 *wrongdoing to [sic] each of the Plaintiffs*. The fact that each of the officers named
5 had little, if any action taken against them *in response thereto* is directly relevant to
6 whether the BPD ratified such conduct and establishes both the harassment, and
7 ‘protected act’ from which [sic] the BPD could retaliate against the Plaintiffs.
8 Further, the performance reviews of each of the above officers is [sic] directly
9 relevant to how the BPD handled such complaints, and whether or not complaints
10 against the officers were even noted. The documents will show also that the BPD has
11 known about the prevalence of discrimination and harassment with respect to these
12 specific officers, yet took no steps to remedy said problems in direct violation of its
13 duties *to the Plaintiffs* under *Government Code §12940*.” (Gresen Decl., p. 34:17-
14 25, emphasis added.)

15 But Category Nos. 16(a) and 16(b) are *not limited* to alleged discrimination or retaliation
16 against “each of the Plaintiffs” – or against anyone else, for that matter. Instead, they seek “all
17 documents” regarding “any investigations” *of any kind* “against or involving any of the
18 OFFICERS,” whether or not the investigations involved alleged discrimination or retaliation against
19 any Plaintiff (or anyone else). Plaintiffs also seek the entirety of every “performance evaluation”
20 any of the “OFFICERS” *has ever received* “during their tenure with the BPD,” including years in
21 which none of the “OFFICERS” even allegedly engaged in “wrongdoing” of any kind against
22 anyone.

23 Plaintiffs’ counsel does not, and cannot, allege any specific facts demonstrating that such
24 investigations and performance evaluations would support Plaintiffs’ remaining claims. (*Warrick*,
25 *supra*, 36 Cal.4th at p. 1021; *Williams*, *supra*, 140 Cal.App.4th at p. 1433.) As discussed above
26 regarding Category Nos. 9-14, allegations of retaliation, discrimination or harassment against
27 persons *other than Plaintiffs* are immaterial to Plaintiffs’ own claims. (*Thompson*, *supra*, 186
28 Cal.App.4th at p. 880; *Trujillo*, *supra*, 63 Cal.App.4th at p. 289.) It is even more obvious that
29 investigations and performance evaluations having *nothing to do* with alleged retaliation,
30 discrimination or harassment against Plaintiffs or anyone else are immaterial to Plaintiffs’ claims.

31 In this additional respect, the required affidavit of Plaintiffs’ counsel is patently insufficient
32 to establish that Plaintiffs’ interest in discovery as to Category Nos. 16(a) and 16(b) outweighs the
33 “just claim to confidentiality” of the 11 BPD “OFFICERS” identified by Plaintiffs. (*City of Santa*

1 *Cruz, supra*, 49 Cal.3d at p. 84.) Thus, this Court should deny outright Plaintiffs' request for
2 documents falling within Category Nos. 16(a) and 16(b).

3 **D. Documents And Information Concerning Conduct More Than Five Years**
4 **Before Each Plaintiff's Claims Arose Must Be Excluded From Disclosure**

5 Plaintiffs pay "lip service" to the statutory requirement that the Court "shall exclude from
6 disclosure," among other things, "[i]nformation consisting of complaints concerning conduct
7 occurring *more than five years before* the event or transaction that is the subject of the litigation in
8 aid of which discovery or disclosure is sought." (Evid. Code, § 1045(b)(1), emphasis added.)

9 But Plaintiffs misconstrue this dictate by merely claiming not to seek "any information
10 regarding complaints concerning conduct that dates *earlier than 1990* (five years prior to Plaintiff
11 Rodriguez's complaint of failure to promote)." (*Pitchess* Motion, p. 22, emphasis added.)

12 In fact, the earliest event regarding Rodriguez's claims referenced in the declaration of
13 Plaintiffs' counsel is **December 2006**, when Rodriguez was assigned to police department hiring
14 and was thereafter allegedly "subject to offensive threats and intimidation" after he ostensibly
15 "implemented a course of action to increase minority hiring." (Gresen Decl., p. 24:7-16.) Thus,
16 Rodriguez is not entitled to any documents or information predating **December 2001**. (Evid. Code,
17 § 1045(b)(1).)

18 Plaintiffs' attempt to tether their motion to an alleged failure to promote Rodriguez in 1995
19 fails for multiple reasons. First, *the required declaration of Plaintiffs' counsel does not allege any*
20 *discriminatory failure to promote or otherwise purport to establish "good cause" for production*
21 *of such documents*. (Evid. Code, § 1043(b)(3).) Instead, counsel's declaration only quotes
22 Rodriguez's requests for documents pertaining to his "bids for advancement to the rank of
23 'Detective' in 1995" and "2001-2002," *without alleging discrimination in these respects*. (Gresen
24 Decl., pp. 34-35; Category Nos. 17(a)-(b) [misabeled in declaration as Nos. 15(a)-(b)].) Thus,
25 Plaintiffs fail to "articulate how the discovery being sought would support" their claims. (*Warrick,*
26 *supra*, 36 Cal.4th at p. 1021; *Williams, supra*, 140 Cal.App.4th at p. 1433.)

27 Second, Plaintiffs identify *no BPD officers* who were supposedly involved in any failure to
28 promote Rodriguez in 1995 or 2001-2002, and no officers "whose records are sought" as to such

1 alleged promotion denials. (Evid. Code, § 1043(b)(1).)

2 Third, Rodriguez's claims for failure to promote in 1995 and 2001-2002 are patently *time-*
3 *barred*, because Rodriguez did not allegedly file any DFEH complaint within one year of the
4 ostensible promotion denials. (Gov. Code, § 12960(d); see FAC, Exh. A [Rodriguez's only DFEH
5 complaint was filed May 27, 2009]) Rodriguez cannot avoid this result under the "continuing
6 violation" doctrine, because: (1) the two promotion denials, as alleged (FAC, pp. 4-5), were *discrete*
7 *acts* that are not subject to this doctrine (see, e.g., *Cucuzza v. City of Santa Clara* (2002) 104
8 Cal.App.4th 1031, 1042-1043); and (2) counsel's declaration alleges *no facts* that would suggest
9 any promotion denials were part of a continuing violation (Gresen Decl., pp. 34-35).

10 Fourth, even assuming arguendo that Rodriguez's claims accrued as early as 1995, Plaintiffs
11 make no attempt to refute the inference that any documents and information pre-dating December
12 2001 "*are so remote as to make disclosure of little or no practical benefit*" as to Rodriguez, thus
13 prohibiting their disclosure on this additional basis. (Evid. Code, § 1045(b)(3).)

14 Fifth, even if Rodriguez were allowed to obtain any documents or information dating back
15 to 1990, *Guillen and Karagiosian make no argument in favor of such discovery*. Instead,
16 Plaintiffs' counsel alleges only that Guillen was harassed "*beginning in 2004*." (Gresen Decl., p.
17 25:11.) Likewise, the Court found that Karagiosian's remaining claim for harassment accrued in
18 2004. (Minute Order, 12/7/2010, p. 4.)

19 Accordingly, under Evidence Code section 1045(b)(1) and (b)(3), Plaintiffs' motion should
20 be denied as to all documents or information concerning conduct *earlier than December 2001 for*
21 *Rodriguez and earlier than 1999 for Guillen and Karagiosian*.

22 E. **Documents And Information Concerning Conduct After Plaintiffs' Claims**
23 **Accrued – Including The 2009-2010 Porto's Investigations – Are Immaterial**
24 **And Should Be Excluded From Disclosure**

25 On May 27, 2009, all three remaining Plaintiffs filed complaints with the DFEH (FAC,
26 Exhs. A, C, E) and also submitted government claims to the City of Burbank (*id.*, Exhs. B, D, F).
27 The DFEH complaints are jurisdictional prerequisites to Plaintiffs' claims under the FEHA (*Martin*
28 *v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724), and submission of a claim
under the Government Claims Act ("GCA") (Gov. Code § 900, et seq.) was a jurisdictional

prerequisite to Rodriguez's and Guillen's claims under POBRA. (*Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1153; see Minute Order, 12/7/2010, pp. 6-7 [dismissing Karagiosian's POBRA claim on summary adjudication].)

Plaintiffs do not allege that they have submitted any DFEH complaints or GCA claims since May 27, 2009. (FAC, pp. 14, 19, 24.) **Accordingly, Plaintiffs are jurisdictionally barred from recovering for any alleged conduct after May 27, 2009 under FEHA** (*Martin, supra*, 29 Cal.App.4th at p. 1724) **or POBRA** (*Lozada, supra*, 145 Cal.App.4th at p. 1153), and any such conduct is *immaterial* to Plaintiffs' claims.

The Court also has ruled that Karagiosian could not avoid summary adjudication based on alleged POBRA violations after the filing of the FAC. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98, fn. 4, cited in Minute Order, 12/7/2010, p. 7.) For this additional reason, any alleged conduct **after July 31, 2009** (the filing date of the FAC) is patently immaterial to Plaintiffs' claims.

Although the declaration of Plaintiffs' counsel references alleged events concerning Rodriguez and Guillen after May 27, 2009 and July 31, 2009 (Gresen Decl., pp. 25:9-14, 26:24-27:3), Plaintiffs fail to discuss the Court's prior ruling that events after the filing of the FAC are immaterial and insufficient to survive summary adjudication. (Minute Order, 12/7/2010, p. 7.) As such, Plaintiffs offer **no factual or legal basis** for seeking disclosure of documents or information pertaining to events after May 27 or July 31, 2009, and have failed to establish "good cause" for such disclosure. (*Warrick, supra*, 36 Cal.4th at p. 1021; *Williams, supra*, 140 Cal.App.4th at p. 1433; Evid. Code, § 1043(b)(3).)

This Court therefore should deny Plaintiffs' motion as to any documents and information regarding events after May 27, 2009, or alternatively after July 31, 2009. In particular, Plaintiffs' motion should be denied as to all documents and information regarding **the 2009-2010 Porto's Investigations**.² Plaintiffs erroneously refer to this as a single investigation (Gresen Decl., p. 25:4-10), when in fact there were **over 30 such investigations** pending between November 11, 2009 and

² As discussed above at pages 4-5, **this Court should deny the entirety of Category No. 3 pertaining to Porto's Investigations** because Plaintiff's motion does not identify any BPD officers whose files he seeks regarding such investigations. (Evid. Code, § 1043(b)(1).)

1 March 5, 2010. (Decl. of John J. Manier, Exh. B, ¶¶ 3, 6, attached hereto.)

2 Rodriguez's sole factual basis for seeking documents regarding the 2009-2010 Porto's
3 Investigations is that he was terminated because of statements Det. Angelo Dahlia made during
4 those investigations. (Gresen Decl., pp. 30-31.) But Rodriguez's termination was in *April 2010* (*id.*,
5 p. 25:9-10) – *more than 9 months after the FAC was filed*. Obviously, Rodriguez's post-FAC
6 termination is immaterial to this lawsuit (*Government Employees Ins. Co.*, *supra*, 79 Cal.App.4th at
7 p. 98, fn. 4; Minute Order, 12/7/2010, p. 7) and cannot justify discovery of any documents or
8 information regarding any or all of the 2009-2010 Porto's Investigations.

9 Even less meritorious is Karagiosian's suggestion that these documents are somehow
10 germane to his harassment and discrimination claims. Counsel's declaration does not allege that any
11 Porto's Investigation constituted "harassment" of Karagiosian (Gresen Decl., pp. 27-29), and under
12 FEHA such "official actions on behalf of the employer" may only constitute discrimination, *not*
13 *harassment*. (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 707.) Because the Court *summarily*
14 *dismissed* Karagiosian's discrimination claim (Minute Order, 12/7/2010, pp. 3-4), the Porto's
15 Investigations are irrelevant to Karagiosian's remaining claims for harassment or failure to prevent.

16 Accordingly, this Court should deny Plaintiffs' request in Category No. 3 for documents
17 regarding the 30-plus 2009-2010 Porto's Investigations, and any implicit requests in Category Nos.
18 2, 4, 5, 6, 7 and 8 for such Porto's Investigation documents and any other conduct occurring after
19 May 27 or July 31, 2009.

20 **F. Documents And Information Pertaining Only To Karagiosian's Summarily**
21 **Adjudicated Claims For Discrimination, Retaliation And Violation Of POBRA**
22 **Are Immaterial And Should Be Excluded From Disclosure**

23 As discussed above, the Court granted Defendant summary adjudication as to Karagiosian's
24 claims for discrimination and retaliation under FEHA (Minute Order, 12/7/2010, pp. 2-5) and his
25 claim for violation of POBRA (*id.*, pp. 6-7). Despite this, Karagiosian seeks disclosure of
26 documents and information that would be material *only to his dismissed claims* for discrimination,
27 retaliation and violation of POBRA, including documents and information regarding:

28 ▪ "any investigations of any kind by the BPD" into Karagiosian's "conduct and/or
work performance" (Category Nos. 2, 3, 4, 5, 6, 7, 8), since such investigations are "official actions

on behalf of the employer” and fall outside the definition of harassment (*Roby, supra*, 47 Cal.4th at p. 707);

- the Special Enforcement Detail (“SED”) (Category No. 19(a)) and its elimination (No. 19(d)), since the Court found that the disbandment of the SED was not an “adverse employment action” and was not discriminatory or retaliatory (Minute Order, 12/7/2010, pp. 3, 5); and

- the “creation” and “staffing” of “the Special Problems Unit (“SPU”)” (Category Nos. 19(e)-(f)), which Karagiosian sought to justify only in connection with his dismissed discrimination claim (Gresen Decl., p. 40).

Plaintiffs’ counsel does not, and cannot, allege any specific facts demonstrating that such documents or information would support Karagiosian’s remaining claims for harassment and failure to prevent. (*Warrick, supra*, 36 Cal.4th at p. 1021; *Williams, supra*, 140 Cal.App.4th at p. 1433.) The Court therefore should deny Karagiosian’s motion as to Category Nos. 2, 3, 4, 5, 6, 7, 8, 19(a), 19(d), 19(e) and 19(f).

Defendant also notes that their Motion for Summary Judgment/Adjudication as to Guillen’s claims is scheduled for hearing on March 7, 2011 – four days before the hearing on the instant *Pitchess* motion. Thus, Defendant will ask this Court to deny Guillen’s motion as to documents pertaining solely to claims on which summary judgment or adjudication is granted.

IV. PLAINTIFFS HAVE NOT ESTABLISHED GOOD CAUSE FOR IN CAMERA REVIEW OF THE PERSONNEL RECORDS OF ANY NON-PARTY OFFICERS

Plaintiffs’ motion asks that this Court review “the personnel files and related materials” of approximately 20 current or former non-party officers: former BPD Chief Tim Stehr, Eric Rosoff, Pat Lynch, Kelly Frank, Dan Yadon, Angelo Dahlia, Mark Stohl, David Kleinfeld, Mitch Ross, Kerry Schilf, Jaime “J.J.” Puglisi, Michael Parrinello, Aaron Kendrick, Darin Ryburn, Jared Cutler, Tracy Sanchez, Scott Moody, Travis Irving, Harry Garay and Pete Allen. (*Pitchess* Motion, pp. 4, 7-9; Category Nos. 16(a)-(b), 18(k), 19(g).) But Plaintiff has not established “good cause” for even an in camera review of these non-party officers’ personnel records.

As discussed above at pages 5-6, Plaintiffs Guillen and Karagiosian have not demonstrated good cause for review of documents pertaining to “any investigation of sexual harassment against

1 or involving” any of the officers identified in Category Nos. 18(k) or 19(g). And as discussed above
2 at pages 6-7, Plaintiffs also have failed to show good cause for review of “[a]ny and all documents
3 constituting, memorializing, or generated as part of any investigations against or involving any of”
4 11 identified BPD “OFFICERS,” or any “performance evaluations” of these “OFFICERS.”
5 (Category Nos. 16(a), (b).)

6 None of the other 53 categories in Plaintiffs’ motion identifies any non-party officers whose
7 personnel records supposedly should be reviewed or disclosed. Instead, these other categories either
8 purport to establish good cause for review or disclosure of *Plaintiffs’ own personnel records*, or
9 fail to identify any officers’ personnel records at all (see pp. 4-5, above).

10 Defendant does not object to the Court conducting an in camera review of Plaintiffs’ own
11 personnel records, subject to the restrictions of the *Pitchess* statutes. However, Plaintiffs have not
12 met their burden of establishing good cause for in camera review of the personnel records of any of
13 the 20 or so non-party officers identified in Plaintiffs’ motion – much less any officers not identified
14 in the motion. Accordingly, this Court should deny Plaintiffs’ motion to the extent it seeks review
15 and disclosure of such non-party officer personnel records.

16 **V. REPORTS OR RECORDS PERTAINING TO NON-PARTIES SHOULD NOT BE DISCLOSED, AND**
17 **ANY REFERENCES TO NON-PARTIES IN PLAINTIFFS’ PERSONNEL RECORDS SHOULD BE**
18 **REDACTED**

19 Courts have not limited the reach of the statutory *Pitchess* protections to the in camera
20 review of peace officers’ personnel records. “As a further safeguard, moreover, *the courts have*
21 *generally refused to disclose verbatim reports or records of any kind from peace officer personnel*
22 *files*, ordering instead ... that the agency reveal only the name, address and phone number of any
23 prior complainants and witnesses and the dates of the incidents in question. [Citations.]” (*City of*
Santa Cruz, supra, 49 Cal.3d at p. 84, emphasis added.)

24 Pursuant to *City of Santa Cruz*, in the event this Court allows in camera review of non-party
25 officers’ personnel records, Defendant respectfully asks this Court not to disclose any verbatim
26 reports or records pertaining to non-party officers. Instead, Defendant submits that the Court should
27 only allow disclosure of names, addresses and phone numbers of any complainants and witnesses
28 and the dates of any material incidents referenced in the personnel records.

Defendant also asks the Court to order that any references to the names of non-party officers in Plaintiffs' own personnel records be redacted from the production of such records. This is consistent with the *Pitchess* statutes, which "issue a *forceful directive* to the courts to consider the privacy interests of the officers whose records are sought and *take whatever steps 'justice requires' to protect the officers from 'unnecessary annoyance, embarrassment or oppression.'*" ([Evid. Code, § 1045(c)-(e)].)" (*City of Santa Cruz, supra*, 49 Cal.3d at pp. 83-84, emphasis added.)

VI. USE OF ANY PITCHESS MATERIALS MUST BE LIMITED TO EACH PLAINTIFF'S CASE

The *Pitchess* statutes also prescribe "a mandatory protective order limiting use of *Pitchess* material to the case in which it is sought." (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1043; Evid. Code, § 1045(e).) Accordingly, Defendant requests a mandatory protective order limiting the use of any documents or information disclosed pursuant to Plaintiffs' motion to each Plaintiff's individual case.

In particular, the Court should order that documents "pertaining to Omar Rodriguez" only (e.g., Category Nos. 17(a), et seq.) cannot be used by Guillen or Karagiosian, in their respective separate trials or otherwise; documents pertaining to Guillen only (e.g., Nos. 18(a), et seq.) cannot be used by Rodriguez or Karagiosian; and documents pertaining to Karagiosian only (e.g., Nos. 19(a), et seq.) cannot be used by Rodriguez or Guillen. The Court's order should make clear that Plaintiffs shall be solely responsible for whatever happens to any records or portions thereof that are produced.

VII. CONCLUSION

Defendant respectfully asks this Court to:

- deny Plaintiffs' *Pitchess* motion outright as to Category Nos. 3, 9, 10, 11, 12, 13, 14, 15, 16(a), 16(b), 17(q), 17(r), 18(k), 18(l), 18(m), 19(g), 19(h) and 19(i);
- deny Plaintiffs' motion as to all documents or information concerning conduct earlier than December 2001 for Rodriguez, and earlier than 1999 for Guillen and Karagiosian;
- deny Plaintiffs' motion as to any documents and information regarding events after May 27, 2009, or alternatively after July 31, 2009 – including, without limitation, Plaintiffs' request in Category No. 3 for documents regarding the 2009-2010 Porto's Investigations, and any implicit

requests in Category Nos. 2, 4, 5, 6, 7 and 8 for such Porto's Investigation documents and any other conduct occurring after May 27 or July 31, 2009;

- deny Karagiosian's motion as to Category Nos. 2, 3, 4, 5, 6, 7, 8, 19(a), 19(d), 19(e) and 19(f);

- deny Guillen's motion as to documents pertaining solely to claims on which Defendant's Motion for Summary Judgment/Adjudication (set for hearing on March 7, 2011) is granted;

- deny Plaintiffs' requests for review and eventual disclosure of the personnel records of any non-party officers;

- in the event the Court allows in camera review of non-parties' personnel records, deny disclosure of any verbatim reports or records therein;

- order that all references to the names of non-party officers in Plaintiffs' own personnel records be redacted from the production of such records; and

- issue a mandatory protective order limiting the use of any documents or information disclosed pursuant to Plaintiffs' motion to each Plaintiff's individual case.

DATED: February 28, 2011

BALLARD, ROSENBERG, GOLPER & SAVITT LLP

By: 

John J. Manier

Attorneys for Defendant CITY OF BURBANK,
including the Police Department of the City of Burbank

DECLARATION OF JOHN J. MANIER

I, John J. Manier, declare and state:

1. If called as a witness, I would and could competently testify to all facts set forth below within my personal knowledge, except where stated upon information and belief.

2. I am a member of the State Bar of California and am admitted to practice as an attorney before all state and federal courts in California, the United States Courts of Appeals for the Third, Ninth, Tenth and District of Columbia Circuits, and the Supreme Court of the United States. I am a Senior Counsel with the law firm of Ballard, Rosenberg, Golper & Savitt LLP, attorneys of record in the within action for Defendant City of Burbank ("Defendant").

3. Attached hereto as Exhibit A for the Court's convenient reference is a true and correct copy of a Minute Order dated December 7, 2007, in which the Court granted Defendant's motion for summary adjudication with respect to Plaintiff Steve Karagiosian's claims for discrimination and retaliation under the Fair Employment and Housing Act (Gov. Code, §§ 12940(a), (h)) and for violation of the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3309.5).

4. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Craig Varner, dated April 8, 2010, which was filed in Los Angeles Superior Court Case No. BC 422252 concurrently with the opposition of Defendant and Doe Officer Nos. 11-12's to the *Pitchess* motion of Plaintiff William Taylor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 28th day of February, 2011, at Glendale, California.


John J. Manier

**DECL. OF
J. MANIER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/07/10

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE
9.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C.A.

Deputy Sheriff

NONE

Reporter

BC414602

Plaintiff

Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER:

MOTION OF DEFENDANT CITY OF BURBANK, INCLUDING THE POLICE DEPARTMENT OF THE CITY OF BURBANK, FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES AGAINST PLAINTIFF STEVE KARAGIOSIAN;

The court having taken the above matter under submission on December 2, 2010, comes now and issues its ruling as follows:

Plaintiff's Evidentiary objections to defendants' evidence are overruled. Defendant's evidentiary objections to plaintiff's evidence are ruled on as follows: Overruled: 1-6, 8, 10-12, 15-17, 24-25, 27, 30-35, 68, 70, 73-74, 118, 132-135, 147-148, 173-174, 176, 178-180, 183-184, 187-188, and 235-237. The remaining objections are sustained.

Defendant submitted a separate statement in reply referencing evidence. The summary judgment statute does not provide for a reply separate statement. Nazir v. United Airlines, Inc. (2009) 178 Cal.App.4th 243, 249. The court has not considered defendant's reply separate statement. The court has considered defendant's reply brief, which violates CRC 2.104 and 3.113(d) (type size and spacing of briefs), but warns defendant that future briefs that do not comply with the rules will not be considered.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/07/10

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NO APPEARANCES

VS

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Counsel

170.6 DAVID P. YAFFE

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NATURE OF PROCEEDINGS:

The motion for summary judgment is denied. The motion for summary adjudication of issues is granted as to the first, third and sixth causes of action and otherwise denied.

First cause of action -- discrimination. Defendant meets its initial burden of demonstrating that plaintiff suffered no adverse employment action and in any event that defendant had legitimate, nondiscriminatory reasons for taking the actions it did. Plaintiff fails to produce admissible evidence creating triable issues of fact.

"Minor or relatively trivial adverse actions or conduct by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment and are not actionable, but adverse treatment that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion falls within the reach of the anti-discrimination provisions of sections 12940(a) and 12940(h)." Yanowitz v. L'Oreal USA, Inc. (2005) 36 Cal.4th 1028, 1054 1055. "A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that

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ELECTRONIC RECORDING MONITOR

G.S. HIRONAKA, C.A.

Deputy Sheriff

NONE

Reporter

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Plaintiff
Counsel

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NO APPEARANCES

VS

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Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

might be unique to a particular situation." Thomas v. Dept. of Corrections (2000) 77 Cal.App.4th 507, 511. Neither defendant's disbanding of the SED unit and defendant's refusal to return plaintiff to his former position as FTO constitutes an adverse employment action.

Even if defendant's disbanding of the SED unit constituted an adverse employment action, Defendant presents evidence of legitimate business reasons-namely budget, department needs and investigations into certain officers within the unit. (UF 44-49.) Once a legitimate business reason is shown, an employee must demonstrate pretext via a showing of "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions," beyond a showing that employer decisions were "wrong, mistaken, or unwise." McRae v. Dept. of Corrections and Rehab. (2006) 142 Cal.App.4th 377, 388. Plaintiff presents no admissible evidence that Defendant's reasons were a pretext for discrimination against him based on his ancestry. Even if the hearsay testimony of Taylor and Jose Duran were admissible, they contend only that they heard Chief Stehr provide other reasons for disbanding the SED unit. Plaintiff, however, provides no evidence that the disbanding of the SED unit was based on his ancestry. Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 360 361 ("The pertinent statutes do not prohibit lying, they prohibit discrimination.")

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Counsel

170:6 DAVID P. YAFFE

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NATURE OF PROCEEDINGS:

Plaintiff also fails to identify a triable issue that Defendant failed to return Plaintiff to his position as a FTO because of his ancestry. The parties do not dispute that there was only one position available at the time. (UF 61.) Plaintiff ranked number 3, but contends that he should have been ranked no. 1. (UF 60-61.) Plaintiff provides no evidence, other than his speculative opinion, that the person who eventually obtained the position did not deserve or was less qualified for the position.

Second cause of action -- harassment. Plaintiff submits sufficient admissible evidence to create a triable issue of fact as to whether he was harassed within the statute of limitations or within a period justified by the continuing violation doctrine. (UF 71-76, 78, 80-81, 85, 179, 181-182, 184-185, 190, 191-194, 196, 198, 199-201, 205, 211-212.) The acts were similar and occurred with reasonable frequency beginning in 2004. Defendant's argument that plaintiff cannot rely on incidents that were not timely reported to the City has no merit. The standard is whether the employer knew or should have known of the harassment. Cal. Gov't Code §12940(j)(1). Defendant does not identify any evidence that it should not have known of the instances of harassment.

Third cause of action -- retaliation. To state a

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VS

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Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

prima facie case of FEHA retaliation, a plaintiff must show that (1) he engaged in "protected activity" by complaining to the employer of discrimination or participating in activities opposing the employer's practices reasonably believed to be unlawful under §12940, (2) the decision maker took an adverse employment action against plaintiff, and (3) the action would not have been taken but for the complaint. *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138. As explained above, two of the alleged adverse employment actions taken against plaintiff -- disbandment of the SED unit, and the failure to promote Plaintiff to a FTO position -- do not constitute adverse employment actions as a matter of law. The other adverse employment actions asserted by plaintiff -- Mike Parinello's appearance at plaintiff's deposition, Parinello's report of plaintiff's complaints of offensive conduct to Sgt. Miguez, Lt. Puglisi's email to Pat Lynch reporting that plaintiff was using an old citation book (which plaintiff admits), and Don Yadon's request that plaintiff not call Officer Cozaoks "the Greek" -- also do not rise to the level of adverse employment actions as a matter of law. Because plaintiff fails to provide evidence that he suffered an adverse employment action because he engaged in protected activity, his third cause of action for retaliation fails.

Fifth cause of action -- failure to prevent

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Deputy Sheriff

NONE

Reporter

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Plaintiff
Counsel

OMAR RODRIGUEZ ET AL

NO APPEARANCES

VS

Defendant

BURBANK POLICE DEPARTMENT ET AL

Counsel

170.6 DAVID P. YAFFE

R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

discrimination, harassment, and retaliation. Because plaintiff has identified triable issues of fact as to his harassment claim, his failure to prevent harassment claim survives summary adjudication. Gov't C. § 12940(k).) Section 12940(k); Northrop Grumman Corp. v. Workers' Comp. Appeals Bd. (2002) 103 Cal.App.4th 1021, 1035.

Affirmative Defense - Statute of Limitations on FEHA Claims. Plaintiff has identified triable issues as to the applicability of the continuing violation doctrine to his harassment claim. Accordingly, the motion must be denied as to this defense.

Sixth cause of action (POBRA violation) and Affirmative Defense of Failure to Comply with Government Tort Claims Act. "No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure." Government Code §3304(a). Plaintiff has admitted that he was never disciplined during his employment. (UF 64, 116, 120.) As explained above, plaintiff fails to raise a triable issue as to whether any adverse employment action was taken against him.

Plaintiff never filed a claim alleging any POBRA violation under the Government Claims Act. (UF

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R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

169.) Nothing in POBRA indicates that the Legislature intended to exempt POBRA from the Government Claims Act. Lozada v. City and County of San Francisco (2006) 145 Cal.App.4th 1139, 1173. Accordingly, plaintiff is barred from pursuing this claim.

Plaintiff's claim that there have been other POBRA violations since the filing of the FAC, namely, an investigation by City Attorney Humiston, does not defeat summary adjudication of his POBRA claim. The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. Government Employees Ins. Co. v. Sup.Ct. (Sims) (2000) 79 Cal. App. 4th 95, 98. Plaintiff's new factual allegations raise new issues not pled in the FAC.

Seventh cause of action -- injunction. Because there are triable issues of fact as to plaintiff's harassment claim, plaintiff's claim for relief is proper.

Clerk to give notice of the above ruling.

CLERK'S CERTIFICATE OF MAILING/ NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/07/10

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

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ELECTRONIC RECORDING MONITOR

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Deputy Sheriff

NONE

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Plaintiff
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NO APPEARANCES

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R/F 7-27-09 Denied as to BC4179

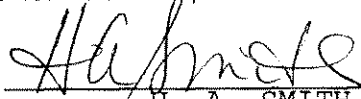
NATURE OF PROCEEDINGS:

above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 12-07-10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 12-07-10

John A. Clarke, Executive Officer/Clerk

By:


H. A. SMITH

Solomon E. Gresen
LAW OFFICES OF RHEUBAN & GRESEN
15910 Ventura Blvd., Suite 1610
Encino, CA 91436

Linda Miller Savitt
Christine T. Hoeffner
BALLARD ROSENBERG GOLPER & SAVITT
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Glendale, CA 91203-9946

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/07/10

DEPT. 37

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R/F 7-27-09 Denied as to BC4179

NATURE OF PROCEEDINGS:

Lawrence A. Michaels

Veronica Von Grabow

MITCHELL SILBERBERG & KNUPP

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Los Angeles, CA 90064

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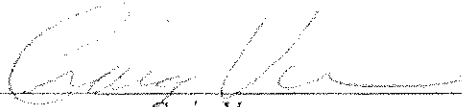
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1 March 31, 2010, the Department provided plaintiff with notice of the results of that investigation,
2 which had been given the sub-number IA 4-16-09-1 #34. As part of the administrative process,
3 the Department also provided plaintiff with the supporting documentation, including the 23-page
4 report of the investigation of the allegations asserted against plaintiff, 101 pages of witness
5 interviews as a part thereof, as well as 65 pages of the underlying, original (2008) internal
6 investigation into alleged misconduct during the Portos robbery investigation, and a CD recording
7 of all of the interviews conducted in both that investigation and the 2009 investigation involving
8 plaintiff. This included the complete report of the investigation of allegations against plaintiff,
9 and the underlying information used in the investigation of plaintiff. Plaintiff's counsel
10 confirmed receipt of this information by letter to the Chief of Police dated March 31, 2010. A
11 true and correct copy of this letter is attached to hereto as Exhibit D.

12 6. Investigation No. IA 4-16-09-1 encompasses over 30 investigations of numerous
13 (over 20) BPD officers, generally for alleged misconduct related to the *criminal* investigation of
14 the Portos Bakery robbery and its aftermath (primarily using force against interview subjects
15 and/or failing to report or trying to prevent the reporting of the use of force against subjects).
16 Plaintiff was not accused of any misconduct in that criminal investigation (and to my knowledge
17 was not involved in that criminal investigation). Rather, the investigation of him stemmed from
18 his actions during the original *internal* investigation into misconduct during the Portos criminal
19 investigation, IA 4-26-08. In short, IA 4-16-09-1 contains confidential personnel information of
20 numerous BPD officers that was not part of or utilized in the investigation of plaintiff.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 2 day of April, 2010, at Burbank, California

24 
25 _____
26 Craig Varner
27
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 500 North Brand
Boulevard, 20th Floor, Glendale, California 91203-9946.

5 On February 28, 2011, I served the following document(s) described as **DEFENDANT'S**
6 **MEMORANDUM IN OPPOSITION TO PLAINTIFFS' PITCHESS MOTION FOR PEACE**
7 **OFFICER RECORDS AND INFORMATION** on the interested parties in this action by placing
true copies thereof enclosed in sealed envelopes addressed as follows:

8 Solomon E. Gresen, Esq.
9 Joseph M. Levy, Esq.
10 Law Offices of Rheuban & Gresen
11 15910 Ventura Boulevard, Suite 1610
12 Encino, CA 91436
13 Tel: (818) 815.2727 • Fax: (818) 815-2737
14 seg@rglawyers.com

15 ☒ **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission from
16 kthomson@brgslaw.com on February 28, 2011, by transmitting a PDF format copy of such
17 document(s) to each such person at the e-mail address listed below their address(es). The
document(s) was/were transmitted by electronic transmission and such transmission was
reported as complete and without error.

18 ☐ **BY MAIL:** I am "readily familiar" with Ballard Rosenberg Golper & Savitt's practice for
19 collecting and processing correspondence for mailing with the United States Postal Service.
20 Under that practice, it would be deposited with the United States Postal Service that same
21 day in the ordinary course of business. Such envelope(s) were placed for collection and
22 mailing with postage thereon fully prepaid at Glendale, California, on that same day
23 following ordinary business practices.

24 ☐ **BY FACSIMILE:** At or before 5:00 p.m., I caused said document(s) to be transmitted by
25 facsimile. The telephone number of the sending facsimile machine was (818) 506-4827.
26 The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth
27 in the service list. The document was transmitted by facsimile transmission, and the sending
28 facsimile machine properly issued a transmission report confirming that the transmission
was complete and without error.

☒ **BY FEDEX:** I deposited such document(s) in a box or other facility regularly maintained
by FedEx, or delivered such document(s) to a courier or driver authorized by FedEx to
receive documents, in an envelope or package designated by FedEx with delivery fees paid
or provided for, addressed to the person(s) being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct. Executed on February 28, 2011, at Glendale, California.

26 
27 Karen J. Thomson